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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 598 2448. 39

ALBERT H. WAITE,
Petitioner,

vs.

THE CITY OF SANTA CRUZ,
Respondent.

Petition to Supreme Court under the Act of March 3, 1891, for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

To the Supreme Court of the United States:

YOUR PETITIONER, ALBERT H. WAITE, respectfully presents to this Court this his petition for a writ of *certiorari* addressed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court and the Clerk thereof to certify to this Court the record and proceedings in the case in said Court wherein the respondent, the said City of Santa Cruz, is plaintiff in error, and your peti-

tioner, the said Albert H. Waite, is the defendant in error, together with its opinion therein, for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress approved March 3, 1891.

Your petitioner states the facts in this behalf as follows: Your petitioner, Albert H. Waite, as plaintiff, began the said case by summons and complaint in an action at law on certain negotiable refunding bonds and coupons against the said City of Santa Cruz in the Circuit Court of the United States for the Northern District of California, and a judgment was, on or about September 29, 1898, rendered by said Court in said action in favor of the plaintiff, said Albert H. Waite. Thereupon the said City of Santa Cruz took the said case, on writ of error, to the United States Circuit Court of Appeals for the Ninth Circuit, and the said Circuit Court of Appeals, by a vote of two judges against one, reversed the judgment of said Circuit Court, and on December 4, 1899, entered judgment accordingly, directing the Circuit Court to enter judgment for defendant (Record, p. 602). On petition for rehearing being filed by the said Albert H. Waite, the said United States Circuit Court of Appeals adhered to its decision, and on March 2, 1900, denied said motion (Record, p. 603). Circuit Judge GILBERT dissented, and wrote a dissenting opinion, agreeing with the opinion and decision of the Circuit Court.

The printed transcript of record and of opinions in the said cause is herewith submitted to this Court. Your petitioner states that the said judgment of the United States Circuit Court of Appeals is contrary to law and directly contrary to the decisions of this Su-

preme Court, especially the case of *Hackett vs. Ottawa*, 99 U. S., 86, and the case of *Evansville vs. Dennett*, 161 U. S., 434 (unanimous decisions of this Court in which Mr. Justice HARLAN gave the opinions), as appears in the record in said case and in the brief on behalf of petitioner herewith submitted.

In addition to the grounds of review shown in the record and brief of the petitioner, the even division of opinion of the judges in the Ninth Circuit on the very point decisive of this case, and which relates, not to a mere question of local law or importance, but to a question of commercial law affecting vast interests in every State of the Union, renders this case eminently one in which a writ of *certiorari* should be granted.

Thus, as this case now stands, two judges, namely, Circuit Judge GILBERT and District Judge DE HAVEN, have given opinions in favor of the validity of the bonds and coupons in question, and two judges, namely, Circuit Judge Ross and District Judge HAWLEY, have given opinions against their validity. The judges in the ninth circuit, therefore, who have had to do with this case, have been evenly divided, two judges against two, on the precise question on which we ask this writ of *certiorari*.

This case, moreover, involves the large amount of $360,000 of bonds and interest thereon, owned by about twenty banks, trust companies and individuals, who paid full value therefor.

Wherefore, your petitioner prays that upon the grounds and reasons appearing in the record of said cause and in the brief in support of this petition, this Court issue such writ of *certiorari*, commanding said United States Circuit Court of Appeals and the clerk thereof to certify to this Court the record and pro-

ceedings in the said case in said Court, with its opinion therein, for the review and determination of said case by this Court, as provided in Section 6 of the Act of Congress of March 3, 1891, and your petitioner will ever pray.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
Attorneys for Petitioner.

W. H. CHICKERING,
M. C. SLOSS,
Of Counsel.